

CHAPTER 3.68
UTILITY USERS TAX

3.68.010 Utility users tax—Tax rate.

Notwithstanding any provision to the contrary in Sections 3.68.030 through 3.68.060 of this chapter, the tax imposed therein shall be imposed at the rate set forth below:

Commencement Date	Rate
October 1, 2000	9.0%
April 1, 2001	8.0%
October 1, 2002	7.0%
October 1, 2003	6.0%
October 1, 2004, and thereafter	5.0%

3.68.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

A. 'Ancillary telecommunications services' means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services including, but not limited to, the following:

1. Services that link two or more participants of an audio or video conference call, including the provision of a telephone number.
2. Services that separately state information pertaining to individual calls on a customer's billing statement.
3. Services that provide telephone number information, and/or address information.
4. Services offered in connection with one or more telecommunications services, which offer advanced calling features that allow customers to identify callers or to manage multiple calls and call connections.
5. Services that enable customers to store, send or receive recorded messages.

- B. 'Billing address' means the mailing address of a service user where a service supplier submits invoices or bills for payment by the service user.
- C. 'City' means the City of Long Beach.
- D. 'Electrical corporation' has the same meaning as defined in Section 218 of the Public Utilities Code.
- E. 'Month' means a calendar month.
- F. 'Person' means, without limitation, any natural person; domestic, nonprofit or foreign corporation; firm; trust; estate; association; syndicate; joint stock company; limited liability company; partnership of any kind; joint venture; club; business or common-law trust of any kind; society; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; municipal district; or municipal corporation (other than the city); or the manager, lessee, agent, servant, officer or employee of any of them.
- G. 'Service address' means the residential street address or the business street address of the service user's primary place of use.
- H. 'Service supplier' means any entity or person that provides telephone communication, electric, gas, or water service to a user of such services within the city.
- I. 'Service user' means a person required to pay a tax imposed by this chapter.
- J. 'Tax administrator' means the revenue administrator of the City of Long Beach.
- K. 'Telephone communication services' includes the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whether or not such information is transmitted through interconnected service with the public switched network, whatever the technology used, whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service – see 47 USCA Section 332(c) (7) (C) (i) – regardless of radio spectrum used), switching facilities, satellite or any other technology now existing or developed after the adoption of this section, and includes, without limitation, fiber optic, coaxial cable, and wireless. The term 'telephone communication services' includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with telecommunications services. 'Telephone communication services' include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: central office and custom calling features (including but

not limited to call waiting, call forwarding, caller identification and three-way calling), local number portability, text messaging, ancillary telecommunication services, prepaid and post-paid telecommunications services (including but not limited to prepaid calling cards); mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and value-added non-voice data service. For purposes of this section, 'private telecommunication service' means any dedicated telephone communications service that entitle a user to exclusive or priority use of communications channels. 'Telephone communication service' does not include: internet access services; video programming services; and digital downloads, such as downloads of books, music, ringtones, games and similar digital products.

L. 'Telephone corporation' has the same meaning as defined in section 234 of the Public Utilities Code."

3.68.030 Electricity users tax.

A. There is imposed a tax upon every person in the city using electrical energy in the city. The tax imposed by this section shall be at the rate of ten percent (10%) of the charges made for such energy and shall be paid by the person paying for such energy.

B. "Charges," as used in this section, includes charges made for: (1) metered energy, and (2) minimum charges for service, including customer charges, service charges, demand charges, standby charges, and annual and monthly charges.

C. As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him or her for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include the mere receiving of such energy by an electrical corporation or governmental agency at a point within the city for resale.

D. There shall be excluded from the base on which the tax imposed in this section is computed charges made for electricity used in the production or distribution of water. The term "water" as used in this subsection shall not include wastewater, salt water, or any water used in the production of oil or gas.

3.68.040 Gas users tax.

A. There is imposed a tax upon every person in the city using gas in the city which is delivered directly or indirectly through mains or pipes. The tax imposed by this section shall be at the rate of ten percent (10%) of the charges made for such gas and shall be paid by the person paying for such gas.

B. "Charges", as used in this section, shall include minimum charges for service of the gas commodity, whether owned by the city or the customer, and the gas

transportation, including, but not limited to, customer charges, service charges, standby charges, and annual and monthly charges.

C. There shall be excluded from the base on which the tax imposed in this section is computed: (1) charges made for gas which is to be resold and delivered through mains or pipes; (2) charges made for gas to be used in the generation of electrical energy by an electrical corporation or governmental agency; (3) charges made for compressed natural gas used for motor vehicle fuel.

3.68.050 Telephone tax.

A. There is imposed a tax upon every person, other than a telephone corporation, who uses telephone communication services in the city, including intrastate, interstate, and international telephone communication services, to the extent permitted by federal and state law. Interstate calls shall be deemed to include calls to the District of Columbia. The telephone users tax is intended to, and does, apply to all charges within the city's tax jurisdiction, such as charges billed to a telephone account having a situs in the city as permitted by the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. § 116 et seq. The tax imposed by this section shall be at the rate of five percent (5%). The tax shall apply to all charges made for such telephone communication services and shall be collected from the service user by the services supplier or its billing agent. There is a rebuttable presumption that telephone communication services billed to a billing or service address in the city are used, in whole or in part, within the city, and that such services are subject to taxation under this chapter. There is also a rebuttable presumption that telephone communication services sold within the city that are not billed to a billing address or provided to a primary physical location (such as prepaid calling card services) are used, in whole or in part, within the city and are therefore subject to taxation under this chapter.

B. As used in this section, the term 'charges' shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone communication services.

C. The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers administrative rulings identifying those telecommunication services that are subject to the tax of subsection A of this section. Such administrative rulings shall be consistent with legal nexus and laws pertaining to telephone communications services and shall not impose a new tax, revise an existing tax methodology, or increase an existing tax, except as allowed by California Government Code Section 53750(h) (2) and (3) or other law. The tax administrator may consider state-wide interpretive rules and guidelines promulgated by any government agency or association of government agencies as a factor in determining the intent of voters adopting this section. To the extent that the tax administrator determines that the tax imposed under this section shall not be collected in full for any period of time, such an administrative ruling falls within the tax administrator's discretion to settle disputes. The tax administrator's exercise of prosecutorial forbearance under this chapter does not constitute a change in taxing methodology for purposes of Government Code

section 53750(h), and the city does not waive or abrogate its ability to impose the telephone users' tax in full as a result of issuing such administrative rulings and may suspend such rulings and recommence collection of the tax without additional voter approval.

D. The following shall be exempt from the tax imposed by this section:

1. Charges paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to long distance telephone service if the charge for such long distance telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

2. Except with respect to local telephone service, on any charges for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

3. Charges for services furnished to an international organization designated under the International Organizations Immunities Act and defined in 22 USCA 288 or to the American National Red Cross.

4. Charges for any long distance telephone service which originates within a combat zone, as defined in section 112 of the Internal Revenue Code, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary of the U.S. Treasury may by regulations prescribe, is furnished to the person receiving such payment.

5. Charges for any long distance telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

6. Amounts paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital referred to in Internal Revenue Code section 170(b)(1)(A)(iii) which is exempt from income tax under Internal Revenue Code section 501(a).

7. Charges for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

8. Charges paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization described in Internal Revenue Code section 170(b)(1)(A)(ii) which is exempt from income tax under

Internal Revenue Code section 501(a). The term also includes a school operated as an activity of an organization described in Internal Revenue Code section 501(c)(3) which is exempt from income tax under Internal Revenue Code section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

9. Charges for maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as such section existed on January 1, 1970.

E. To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another American jurisdiction on such telephone communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the city under this section. This ordinance shall be construed broadly in favor of the imposition and collection of the utility users tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

F. The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected from the twenty-sixth day of each month through the twenty-fifth day of the following month shall be remitted to the city clerk on or before the twenty-sixth day of such following month, or at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by billings of the previous month, shall be remitted to the clerk on or before the twenty-sixth day of each month.

G. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this subchapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as that law may change from time to time. Any telephone communication service (including VoIP) used by a person with a service address in the city, which service is capable of making a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the city to be obligated to collect and remit the tax imposed by this chapter if it does any of the following: maintains or has within the city, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the city by employees, independent contractors, resellers, agents or other representatives; solicits business in the city by means of advertising that is broadcast or relayed from a transmitter within the city or distributed from a location within the city; or advertises in newspapers or other periodicals printed and published within the city or through materials distributed in the city by means other than the United States mail."

3.68.060 Water users tax.

A. There is imposed a tax upon every person using in the city water which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of ten percent (10%) of the charges made for such water and shall be paid by the person paying for such water.

B. "Charges", as used in this section, shall include minimum charges for service, including customer charges, service charges, standby charges, and annual and monthly charges.

C. There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through mains or pipes and charges made for water used in the generation of electrical energy by an electrical corporation.

3.68.065 Segregation of nontaxable charges.

As used in this chapter, the term "charges" shall include the value of all consideration provided by the service user in exchange for utility services. If a nontaxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier identifies, by verifiable data, based upon its books and records that are kept in the regular course of business, in a manner that is consistent with generally accepted accounting principles, the nontaxable component of the charge. The service supplier has the burden of proving the proper apportionment of taxable and nontaxable charges.

3.68.070 Exemption—Constitutional violation.

Nothing in this chapter shall be construed as imposing a tax upon any person if imposition of such tax upon that person would be in violation of the constitution of the United States or the constitution of the state.

3.68.075 Effect of state and federal authorization.

To the extent that the city's authorization to impose or collect any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the city's authorization up to the full amount of the tax imposed under this chapter.

3.68.080 Exemption—Application.

A. The tax imposed by this chapter shall not apply to any individual sixty-two (62) years of age or older who uses telephone, electric, gas or water services, in or upon any premises occupied by such individual, provided the combined gross income of all members of the household in which such individual resides does not exceed a certain maximum amount for the calendar year prior to the fiscal year for which the exemption

provided in this chapter is applied for. The maximum amount of combined gross income of all members of the household shall be established by resolution of the city council and available at the office of the City Clerk, 333 West Ocean Boulevard; and Commercial Services Bureau, 333 West Ocean Boulevard, Long Beach, California 90802.

B. The tax imposed by this chapter shall not apply to any individual who is disabled, as defined herein, or in whose household a disabled individual resides, who uses telephone, electric, gas or water services, in or upon any premises occupied by such a disabled individual, provided the combined gross income of all members of the household in which such individual resides does not exceed a certain maximum amount for the calendar year prior to the fiscal year for which the exemption provided in this chapter is applied for. The maximum amount of combined gross income of all members of the household shall be established by resolution of the city council and available at the office of the City Clerk, 333 West Ocean Boulevard; and Commercial Services Bureau, 333 West Ocean Boulevard, Long Beach, California 90802.

For purposes of this section, a "disabled individual" is defined as an individual under a physical disability as defined in Section 223 of the Social Security Act (42 USC 423) and Section 102(b)(5) of the Developmentally Disabled Assistance and Bill of Rights Act (42 USC 6001(7)), and as such sections shall be amended from time to time.3.68.080

For purposes of this section, gross income of all members of the household shall include, but not be limited to, the total gross wages, salary, business receipts, rents, gains, profits, gifts, inheritances, trusts, stock earnings, royalties, alimony, child support, welfare payments, medicare, pensions, social security, and all other receipts whether received in cash, credits, property or services of any kind or nature during each calendar year for which the applicant seeks an exemption.

C. The exemptions granted by this section shall not eliminate the duty of the service supplier from collecting taxes from such exempt individuals or the duty of such exempt individuals from paying such taxes to the service supplier unless an exemption is applied for by the service user and granted in accordance with the provisions of subsection D of this section.

D. Any service user exempt from the taxes imposed by this chapter because of the provisions of subsection A or B of this section may file an application with the city treasurer for an exemption. Such application shall be made upon a form supplied by the city treasurer and shall recite facts under oath which qualify the applicant for an exemption. The city treasurer shall review all such applications and certify as exempt those applicants determined to qualify therefor and shall notify all service suppliers affected that such exemption has been approved, stating the name of the applicant, the address to which such exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure. Upon receipt of such notice, the service supplier shall not be required to continue to bill any further tax imposed by this chapter from such exempt service user upon the earlier of a change of service address,

termination of service, or until further notice by the city treasurer is given. The service supplier shall eliminate such exempt service user from its tax billing procedure upon receipt of such notice from the city treasurer, but no later than sixty (60) days after receipt of such notice from the city treasurer, or as otherwise provided by law.

All exemptions shall continue and be renewed automatically by the city treasurer so long as the prerequisite facts supporting the initial qualification for exemption continue; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual; further provided, such individual may nevertheless apply for a new exemption with each change of address or residence. Any individual exempt from the tax shall notify the city treasurer within ten (10) days of any change in fact or circumstance which might disqualify such individual from receiving such exemption. The city treasurer may request reverification of eligibility from individuals claiming an exemption annually or as deemed necessary by the city treasurer. It shall be a misdemeanor for any person in a household to knowingly receive the benefits of the exemptions provided by this section when the basis for such exemption either does not exist or ceases to exist.

Notwithstanding any of the provisions of this subsection, however, any service supplier who determines by any means that a new or nonexempt service user is receiving service through a meter or connection exempt by virtue of an exemption issued to a previous user or exempt user of the same meter or connection, such service supplier shall immediately notify the city treasurer of such fact and the city treasurer shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with, and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.

3.68.090 Refund in lieu of exemption.

A. Commencing January 1, 1977, any individual entitled to be exempt from the taxes imposed by this chapter who used electric, gas or water services during the preceding calendar year and paid the taxes required in this chapter either directly or indirectly to the service user rather than the service supplier may file an application for a refund on forms provided by the city treasurer. The application shall contain a declaration of the facts, under oath, which qualify the applicant for the refund. The application shall be filed on January 1st but not later than March 1st of each year, for the preceding calendar year. Section 3.48.040 of this title relating to the conditions for payment of refunds shall apply.

B. The refund allowable to applicant under this section shall be two dollars twenty-five cents per utility per month, for each full month of service.

3.68.100 Collection.

A. Every person receiving payment of charges from a service user shall collect the amount of tax imposed by this chapter from the service user.

B. The tax shall be collected insofar as practicable at the same time as, and along with, the collection of charges made in accordance with the regular billing practice of the service supplier.

C. The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of this chapter. If a person received more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period

3.68.110 Returns and remittances.

Each service supplier shall, on or before the twentieth of each month, make a return to the city treasurer-city tax collector on forms in the manner prescribed by the city treasurer-city tax collector, stating the amount of taxes billed by the service supplier during the preceding month. At the time the return is filed, the full amount of the tax collected shall be remitted to the city treasurer-city tax collector. The city treasurer-city tax collector is authorized to properly determine if the tax imposed is being levied and collected in accordance with this chapter. Returns and remittances are due immediately upon cessation of business for any reason.

3.68.120 Records.

It shall be the duty of service supplier to keep and reserve for a period of three years all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection and remittance to the city treasurer-city tax collector, which records city personnel shall have the right to inspect at all reasonable times.

3.68.130 Delinquent payment penalty.

A. Taxes collected from a service user which are not remitted to the city treasurer-city tax collector on or before the due dates provided in this chapter are delinquent.

B. Penalties for delinquency in remittance of any tax collected or any deficiency determination shall attach and be paid by the service supplier at the rate of fifteen percent (15%) of the total tax collected or imposed in this chapter.

C. The city treasurer-city tax collector shall have power to impose additional penalties upon the service supplier under the provisions of this chapter for fraud or negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected or as recomputed by the city treasurer-city tax collector.

D. Every penalty imposed under the provisions of this section shall become a part of the tax required to be remitted.

3.68.140 Failure to pay—Administrative remedy.

Whenever the city treasurer-city tax collector determines that a service user has deliberately withheld the amount of the tax owed by him or her from the amounts remitted to a service supplier, or that a service user has failed to pay the amount of the tax for a period of two or more billing periods, or whenever the city treasurer-city tax collector deems it in the best interest of the city, he or she may relieve the service supplier of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods. The city treasurer-city tax collector shall notify the service user that he or she has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him or her personally or by deposit of the notice in the United States Postal Service, postage prepaid thereon, addressed to the service user at the address to which billing was made by the service supplier; or should the service user have changed his or her address, to his or her last known address. If a service user fails to remit the tax to the city treasurer-city tax collector within fifteen (15) days from the date of the service of the notice upon him or her, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice shall be imposed, but in no event shall the total penalty for nonpayment of the delinquent tax accounts be less than five dollars. The penalty shall thereupon become part of the tax required to be paid by this chapter.

3.68.150 Collection action.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has not been remitted to the city treasurer-city tax collector shall be deemed a debt owed to the city by the service supplier. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

3.68.160 Refunds.

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city clerk or city treasurer-city tax collector under this chapter, it may be refunded as provided in this section.

B. A service supplier may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received, when it is established in a manner prescribed by the city treasurer-city tax collector that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit.

C. No refund shall be paid under the provisions of this section unless the claimant established his or her right thereto by written records showing entitlement thereto.

D. No refund shall be paid under the provisions of this section unless the claimant has submitted a claim pursuant to this section.

3.68.170 Independent Audit.

The city shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of as to a service supplier where the cost of the verification is expected to exceed the tax revenues to be reviewed.